

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: : CASE NO. 16-12152-JKF
HOWARD C. LAPENSOHN, :
Debtor, :

THOMAS E. PEREZ, :
SECRETARY OF LABOR, :
UNITED STATES DEPARTMENT OF LABOR, :
Movant, :
v. :
HOWARD C. LAPENSOHN, :
Respondent. :

CONSENT ORDER

This Consent Order by and between Debtor, Howard C. Lapensohn (“Debtor”), and Thomas E. Perez, Secretary of Labor, United States Department of Labor (“Secretary”), is based on the following averments:

1. On March 30, 2016, Debtor filed a Petition for Relief under Chapter 11 of the Bankruptcy Code with this Court.
2. Debtor is a fiduciary to the Lapensohn Accounting Professional SIMPLE IRA Plan (“Plan”).
3. Debtor and his co-fiduciary Lapensohn Accounting Professionals, LLC (“Company”) entered into a Consent Judgment with the Secretary in the United States District Court for the Eastern District of Pennsylvania.
4. The Consent Judgment was approved by Judge Petrese B. Tucker on June 30,

2015. See Exhibit A attached hereto and made a part hereof.

5. The Consent Judgment found Debtor liable for his fiduciary breaches and ordered him to restore \$36,828.10 to the Plan by July 10, 2015. See Exhibit A at paragraph 4(b).
6. Debtor did not make any payments to the Plan pursuant to the Consent Judgment.
7. The Consent Judgment provided that if Debtor filed for bankruptcy protection prior to making full restitution to the Plan, Debtor would not oppose the Secretary's proof of claim for the amount still owed to the Plan and would not oppose any adversarial action to have the amount still owed to the Plan be declared to be non-dischargeable. See Exhibit A at paragraph 4(g).
8. The Secretary's Complaint in District Court alleged that Debtor and the Company are fiduciaries of the Plan pursuant to Section 3(21) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.* See Exhibit B, at paragraphs 6 and 7, attached hereto and made a part hereof.
9. The Secretary's Complaint in District Court alleged that Debtor and the Company, by withholding employee contributions from their pay but failing to remit them to the Plan and by failing to make mandatory employer contributions to the Plan, breached their fiduciary duties in violation of Sections 403, 404, and 406 of ERISA, 29 U.S.C. §§ 1103, 1104, and 1106 and are liable as co-fiduciaries under Section 405 of ERISA, 29 U.S.C. § 1105. See Exhibit B, at paragraphs 10 and 11.
10. Pursuant to the Consent Judgment, Debtor agrees that the full amount owed to the Plan of \$36,828.10 is not dischargeable pursuant to Section 523(a) of the

Bankruptcy Code.

11. Counsel for the United States Trustee, George M. Conway, was contacted by counsel for the Secretary and stated that he will take no position on this Consent Order.

WHEREFORE, based on the above averments, the parties hereto agree that the above-referenced debt to the Plan is not dischargeable and request entry of this Consent Order.

Debtor Howard C. Lapensohn

/s/ Robert M. Greenbaum, Esquire

By: Robert M. Greenbaum, Esquire
Counsel for Debtor

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Date: June 29, 2016

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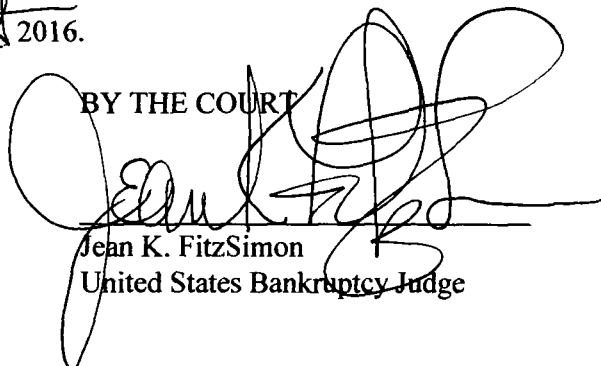
U.S. DEPARTMENT OF LABOR

Date: June 29, 2016

Based on the above-referenced Consent Judgment in the District Court and the foregoing averments agreed to by the parties, Debtor's debt to the Plan is declared to be non-dischargeable.

Approved by the Court on this 3rd day of August 2016.

BY THE COURT


Jean K. FitzSimon
United States Bankruptcy Judge